

## TWELFTH DAY

(Continued)

(Thursday, October 3, 1935)

The House met at 9:00 o'clock a. m., and was called to order by Speaker Stevenson.

Mr. Aikin moved a call of the House for the purpose of maintaining a quorum, and the call was duly seconded.

On motion of Mr. Fuchs, the Sergeant-at-Arms was instructed to bring in all absent members within the city, who are not ill.

## LEAVE OF ABSENCE GRANTED

(By Unanimous Consent)

Mr. Leonard was granted leave of absence for today on account of illness in his family, on motion of Mr. Glass.

(Mr. Calvert in the Chair.)

## COMMUNICATION TO THE MEMBERS OF THE HOUSE

The Chair laid before the House and had read the following communication:

Bonham, Texas, October 1, 1935.

To the Members of the House of Representatives:

Received the beautiful flowers for which accept our thanks for this kind remembrance. Mr. Fitzwater seems to be improving some and wishes so much he could be with you. He can sit up some and our boys took him out driving Sunday. He certainly enjoyed the trip.

With best wishes to all.

MR. AND MRS. W. W. FITZWATER.

## GRANTING MISS HATTIE RAY WATSON PERMISSION TO SUE THE STATE

The Chair laid before the House, for consideration at this time,

S. C. R. No. 2, Granting Miss Hattie Ray Watson permission to sue the State.

The resolution having heretofore been read second time and referred to the Committee on State Affairs.

The Committee on State Affairs having recommended the adoption of the resolution.

Question recurring on the resolution, it was adopted.

## ADDITIONAL SIGNERS OF AMENDMENT TO HOUSE BILL NO. 1

By unanimous consent of the House, the following members were authorized to sign the substitute amendment, offered by Mr. Bradbury to House Bill No. 1: Mr. Fox, Mr. Harris of Archer, Mr. Reed of Bowie, Mr. Frazer, Mr. Cooper, Mr. Fain, Mr. Davison of Fisher, Mr. Westfall, Mr. Hunt, Mr. Hardin, Mr. Worley, Mr. Russell, Mr. Stovall and Mr. Venable.

(Speaker in the Chair.)

## MESSAGE FROM THE SENATE

Austin, Texas, October 3, 1935.

Hon. Coke Stevenson, Speaker of the House of Representatives.

Sir: I am directed by the Senate to inform the House that the Senate has adopted the following:

S. C. R. No. 3, Providing for Joint Session of the House and Senate to be held in the Hall of the House at 2:00 p. m., Monday, October 7, 1935, for dedication of painting of Jesse Holman Jones.

Respectfully,

BOB BARKER,  
Secretary of the Senate.

## HOUSE BILL NO. 1 ON PASSAGE TO ENGROSSMENT

The Speaker laid before the House, as pending business, on its passage to engrossment,

H. B. No. 1, A bill to be entitled "An Act regulating the manufacture, sale, importation, transportation and possession of alcoholic liquors; levying taxes; prescribing penalties for violations; repealing conflicting laws and parts of laws and amending the same; and declaring an emergency."

The bill having heretofore been read second time, with committee amendment by Mr. Morse, and substitute amendment by Mr. Bradbury for the committee amendment, pending.

Mr. Bradbury offered the following amendments to the amendment offered by himself:

Amend Bradbury amendment for committee amendment to House Bill No. 1 by adding on page 1, line 8,

the word "temperance" after the word "morals."

Amend Bradbury amendment for committee amendment to House Bill No. 1, by striking out on page 24, lines 23 and 24, the words "boat, dining car."

Amend Bradbury amendment for committee amendment to House Bill 1, page 1, line 17, by striking out the word accessible and insert in lieu thereof the word "adjacent."

The amendments were severally adopted.

Mr. Morse moved to table the substitute amendment by Mr. Bradbury.

Question—Shall the motion to table prevail?

#### BILL AND RESOLUTION SIGNED BY THE SPEAKER

The Speaker signed, in the presence of the House, after giving due notice thereof and their captions had been read severally, the following enrolled bill and resolution:

H. B. No. 36, "An Act to permit the Bradfish Grain Company and the member or members composing the same to sue the State of Texas and the State Highway Department, of Texas, for damages alleged to have been done and to have accrued to the property of said company, which is used for conducting a grain business in the City of Weatherford, said property being used in conducting a feed and grain business and located on the North side and adjoining Fort Worth Street and State Highway No. One (1); etc., and declaring an emergency."

S. C. R. No. 2, Granting Miss Hattie Ray Watson permission to sue the State.

#### RECESS

On motion of Mr. Hanna, the House at 12:05 o'clock p. m., took recess to 2:00 o'clock p. m., today.

#### AFTERNOON SESSION

The House met at 2:00 o'clock p. m., and was called to order by the Speaker.

#### HOUSE BILLS ON FIRST READING

The following House bills, introduced today, (by unanimous consent) were laid before the House, read severally

first time, and referred to the appropriate committees, as follows:

By Mrs. Moore and Mr. Thornton:

H. B. No. 105, A bill to be entitled "An Act making an appropriation for the Galveston State Psychopathic Hospital, providing for the purpose thereof; and declaring an emergency."

Referred to the Committee on Appropriations.

By Mr. Russell:

H. B. No. 106, A bill to be entitled "An Act making an appropriation of money for the Liberty Hill Common School District of Titus County; providing for the purposes thereof, and declaring an emergency."

Referred to the Committee on Appropriations.

By Mr. Duvall:

H. B. No. 107, A bill to be entitled "An Act to appropriate money to pay all rentals due and unpaid by the State of Texas under contracts made by the Adjutant General with the owners of buildings, for the purpose of housing various kinds of military and army property belonging to the State and used by the National Guard, and to validate said accounts and the contracts under which the same accrued, and declaring an emergency."

Referred to the Committee on Appropriations.

By Mr. Stinson:

H. B. No. 108, A bill to be entitled "An Act making an appropriation to pay judgments of the District and County Courts refunding to the heirs, devisees, legatees or legal representatives of deceased persons, whose estates have escheated to the State as herein enumerated, such sums of money belonging to such escheated estates as have been paid into the Public Treasury; etc., and declaring an emergency."

Referred to the Committee on Appropriations.

By Mr. Lange, Mr. Dunlap of Kleberg, Mr. Payne, Mr. Hankamer, Mr. Clayton and Mr. Jackson:

H. B. No. 109, A bill to be entitled "An Act making certain emergency appropriations out of the General Revenue of the State of Texas for the Live Stock Sanitary Commission for additional support and mainte-

nance of the Live Stock Sanitary Commission for the balance of the two year period beginning September 1, 1935, and ending August 31, 1937, to cover the office expenses, traveling expenses, the purchase of dip material, and marking paint, laboratory equipment and supplies, etc., and declaring an emergency."

Referred to the Committee on Appropriations.

By Mr. McKinney:

H. B. No. 110, A bill to be entitled "An Act making certain emergency and supplemental appropriations out of the General Funds of the State of Texas for the Texas Prison System for the fiscal years ending August 31, 1936 and August 31, 1937, respectively, and declaring an emergency."

Referred to the Committee on Appropriations.

By Mr. Butler of Karnes and Mr. Roane:

H. B. No. 111, A bill to be entitled "An Act making an appropriation of Forty-five (\$45.00) Dollars to pay S. B. Carr, Judge of the 81st Judicial District of Texas, for his expenses incurred in exchange of benches; and declaring an emergency."

Referred to the Committee on Appropriations.

By Mr. Patterson, Mr. Padgett and Mr. Fain:

H. B. No. 112, A bill to be entitled "An Act to appropriate money to pay judgment for the sum of Twelve Hundred (\$1200.00) Dollars against the State of Texas in favor of R. D. Winder in cause No. 52982 in the 126th District Court of Travis County, and declaring an emergency."

Referred to the Committee on Appropriations.

By Mr. Stanfield:

H. B. No. 113, A bill to be entitled "An Act making emergency appropriations of \$16,628.00 to the West Texas State Teachers College at Canyon, Texas, for the purpose of purchasing supplies and furnishing labor for the laying of water and gas mains and furnishing electrical wiring and appliances to the boys dormitory and laying water, gas and sewer mains to the students cottages, located at said college, etc., and declaring an emergency."

Referred to the Committee on Appropriations.

By Mr. Mauritz and Mr. Hill:

H. B. No. 114, A bill to be entitled "An Act to aid Wharton County comprising one district and that portion of Matagorda County embraced in Commissioners' Precincts Numbers one, two, and four as described in the minutes of the Commissioners' Court of said county, comprising another district for the remaining portion of the period of time covered by the release of taxes to said district as made by Chapter 48, Acts Thirty-eighth Legislature, First, Second and Third Called Sessions, page 102 to 105 (Senate Bill No. 54) by donating and appropriating to said districts all the state ad valorem taxes levied and collected in said districts for general state purposes on all property, both real and personal, in said districts for the purpose of creating a fund for the payment of interest upon and creating a sinking fund for that certain issue or issues of bonds that were voted and issued under the authority of Chapter 48, Acts Thirty-eighth Legislature, First, Second, and Third Called Sessions, and declaring an emergency."

Referred to the Committee on Conservation and Reclamation.

(Mr. Hanna in the Chair.)

#### COMMENDING THE POLICY OF PRESIDENT FRANKLIN D. ROOSEVELT

Mr. Roane offered the following resolution:

Whereas, At this time the horizon of world commerce and relations has been clouded by threats of impending war between certain foreign countries; and

Whereas, Many of our citizens feel a deep sense of apprehension lest some of the nations of the world repeat the folly of twenty years ago and drag, by conflict of war, civilization to a level from which world-wide recovery may be all but impossible; and

Whereas, In the face of this apprehension the American people can have but one concern and speak but one sentiment, and that is, despite what happens on continents over seas, the United States of America shall and must remain, as long ago, the father

of our country prayed that it might remain, untangled and free; and

Whereas, Recently Franklin D. Roosevelt, President of these United States of America, expressed himself publicly as being unalterably opposed to any policy of our interference in foreign wars, or affairs, and expressed our national determination to keep our country free of foreign wars and foreign entanglements; and

Whereas, It is the desire of the House of Representatives of the State of Texas to express its approval of said policy; therefore, be it

Resolved by the House of Representatives of the State of Texas, That we hereby express our approval of the policy of Franklin D. Roosevelt, President of these United States, in his firm determination to keep our country free of foreign wars and foreign entanglements, and we do hereby urge our said President to stand firm in his said determination. A copy hereof shall be mailed by the Clerk of this House to the President of the United States.

The resolution was read second time, and was adopted.

(Speaker in the Chair.)

#### PROVIDING FOR THE APPOINTMENT OF ADDITIONAL MEMBER ON CERTAIN COMMITTEE

Mr. Hoskins offered the following resolution:

Whereas, The House on Wednesday, September 25th, adopted a resolution appointing a special committee of five to investigate rumors and charges of abuse in the enforcement of the Motor Transportation Laws; and

Whereas, There was appropriated the sum of \$200.00 to pay the necessary expenses of securing and collecting evidence, but no amount was appropriated to pay traveling expenses of the committee; and

Whereas, The sum of \$200.00 is not sufficient to pay the expenses of a small portion of the witnesses that should be heard and much money can be saved and the purposes of the resolution can be better served by the committee holding hearings in Houston and Fort Worth or other principal trucking centers of the State; now, therefore, be it

Resolved, That the committee be increased to six members so that two sub-committees of three can be sent to such places as the number and nature

of the complaints justify to hold public hearings; and be it further

Resolved, That the sum of \$150.00 or as much thereof as may be necessary to defray the actual traveling expenses of the committee when holding such hearings to be paid out of the contingent funds of the House on sworn accounts by the Chairman of the Committee.

HOSKINS,  
THORNTON,  
DANIEL,  
COLSON,  
LANNING,  
LUCAS.

The resolution was read second time, and was adopted.

#### RESOLUTION SIGNED BY THE SPEAKER

The Speaker signed in the presence of the House, after giving due notice thereof and its caption had been read, the following enrolled resolution:

H. C. R. No. 8, Relative to co-operative agricultural extension work.

#### HOUSE BILL NO. 1 ON PASSAGE TO ENGROSSMENT

The House resumed consideration of pending business, same being House Bill No. 1, relative to the manufacture and sale of intoxicating liquors, on its passage to engrossment;

The bill having heretofore been read second time, with committee amendment by Mr. Morse, and substitute amendment by Mr. Bradbury for the committee amendment by Mr. Morse, and motion by Mr. Morse to table the substitute amendment by Mr. Bradbury, pending.

Mr. Pope raised the following point of order on consideration of the amendment by Mr. Bradbury:

"I raise a point of order for the reason that the following language in Section 3 to Committee Amendment No. 1 to House Bill No. 1 renders said Committee Amendment unconstitutional, to-wit:

"To be consumed on the premises where sold or on premises accessible thereto, or any public place where intoxicating liquor as above defined is permitted to be consumed."

"That said Section 3 is the section in said amendment that seeks to define the term 'open saloon.' The purpose of the amendment to the Con-

stitution was to repeal the Constitutional inhibition against the sale of intoxicating liquors in Texas, and the language of the repeal provision of the Constitution expressly authorized the Legislature to regulate the manufacture, sale, possession and transportation of intoxicating liquors with the mandatory provision therein for local option and with the further mandatory provision that political subdivisions would have the right of voting on the various types and various alcoholic content, and in Subdivision (c) of said repeal provision it is provided that local option shall be to determine the sale of spirituous, vinous and malt liquors or any other intoxicants whatever for beverage purposes. Under these provisions there is no power vested in the Legislature to withdraw or withhold from the people the right to pass upon the question as to where intoxicating liquors may be sold and in what type or alcoholic content. The quoted provision out of said Section 3 so defines the words "open saloon" as to absolutely withdraw from the people the right to provide a place where intoxicating liquors may be sold or the types or the alcoholic content.

"From the decisions of the courts of this State, business cannot be conducted except in a public place, and the said language in said Section 3 denies the sale of intoxicating liquor regardless of its type or alcoholic content in every public place or on premises accessible thereto or at public places where intoxicating liquor is permitted to be consumed. Said language precludes the possibility of making sales except in private places, and of course, when private places become the place of sale they immediately become public places and are again inhibited by said language. Therefore, the purposes of the Constitution which commanded the definition of an open saloon defeats the purposes of repeal and defeats the mandatory provision of local option and the mandatory provision of determining the types and the alcoholic content.

"Section 6 of said Supplement also renders said amendment unconstitutional wherein it makes one rule for wet territory and another rule for dry territory and contravenes Subdivision (a) of Article 16 adopted August 26, 1933. In said last named provision of the Constitution, 3.2% alcoholic con-

tent by weight was legalized under certain local option provisions. Regardless of this provision of the Constitution, said Subdivision 6 limits the manufacture, sale, possession and transportation of all liquor containing alcohol in excess of  $\frac{1}{2}$  of 1% by volume. This directly and unconditionally denies all choice by the people at local option elections in political subdivisions in this State and fixes the maximum alcoholic content regardless of the mandatory provisions of Section 20, Article XVI, adopted August 24, 1935. Section 6 expressly provides that the manufacture, sale, possession or transportation of liquor containing alcohol in excess of  $\frac{1}{2}$  of 1% shall not apply in wet areas under the terms of Chapter 116, Acts of the Regular Session of the Forty-third Legislature when the liquor in question is a vinous or malt liquor. This limitation does not apply to dry areas and is therefore a provision not uniform to all parts of Texas and expressly contravenes that provision in Subdivision (b) of Section 20, Article XVI, which commands the Legislature to provide for local option and allow a vote of the people in the political subdivisions to determine the various types and various alcoholic content. Since said Section 6 limits the manufacture, sale, possession or transportation in dry areas to liquor with less alcoholic content than  $\frac{1}{2}$  of 1%, and then defines that such provision shall not apply in wet territory where the vinous or malt liquor does not contain alcohol in excess of 4% by weight it cannot be set by that. By virtue of said Section 6 a different rule is sought to be imposed in dry territory to that imposed in wet territory and that statutory content and type is sought to be fixed, which under the Constitutional Amendment of 1933 and the Constitutional Amendment of 1935 expressly denied except by local option vote.

"For the reasons stated, I urge the point of order that said amendment is unconstitutional."

POPE.

The Speaker overruled the point of order.

Question recurring on the motion by Mr. Morse to table the substitute amendment by Mr. Bradbury, yeas and nays were demanded.

The motion to table was lost by the following vote:

## Yeas—53

Bergman	Jackson
Butler of Karnes	James
Caldwell	Jefferson
Celaya	King
Clayton	Knetsch
Collins	McCalla
Colquitt	McKee
Colson	Moore
Crossley	Morse
Dickison	Newton
Dunagan	Nicholson
Duvall	Olsen
Dwyer	Patterson
Ford	Pope
Fuchs	Reader
Good	Reed of Dallas
Greathouse	Roane
Hankamer	Roark
Hanna	Roberts
Harris of Dallas	Rutta
Hartzog	Scarborough
Herzik	Smith
Hill	Stanfield
Hofheinz	Stinson
Holland	Thornton
Hoskins	Young
Howard	

## Nays—86

Adamson	Frazer
Adkins	Gibson
Aikin	Glass
Alexander	Gray
Alsup	Hardin
Ash	Harris of Archer
Atchison	Hodges
Beck	Huddleston
Bourne	Hunt
Bradbury	Hunter
Bradford	Hyder
Broyles	Jones of Atascosa
Burton	Jones of Falls
Butler of Brazos	Jones of Shelby
Cagle	Jones of Wise
Calvert	Keefe
Canon	Lanning
Cooper	Latham
Cowley	Lemens
Craddock	Lindsey
Davis	Lotief
Davison of Fisher	Lucas
Davisson	Luker
of Eastland	Mauritz
Dunlap of Hays	McConnell
Dunlap of Kleberg	McFarland
England	McKinney
Fain	Moffett
Farmer	Morris
Fisher	Morrison
Fox	Palmer

Payne	Tarwater
Petsch	Tennyson
Quinn	Tillery
Reed of Bowie	Venable
Roach of Angelina	Waggoner
Roach of Hunt	Walker
Rogers	Wells
Russell	Westfall
Sessions	Wood of Harrison
Settle	Wood of Montague
Shofner	Worley
Steward	Youngblood
Stovall	

## Present—Not Voting

Daniel	Padgett
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## Absent

Graves	Leath
Head	Riddle
Lange	Spears

## Absent—Excused

Fitzwater	Leonard
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## PAIRED

Mr. Daniel (present), who would vote "yea," with Mr. Graves (absent) who would vote "nay."

Question then recurring on the substitute amendment by Mr. Bradbury, yeas and nays were demanded.

The substitute amendment was adopted by the following vote:

## Yeas—88

Adamson	Dunlap of Kleberg
Adkins	England
Aikin	Fain
Alexander	Farmer
Alsup	Fisher
Ash	Fox
Atchison	Frazer
Beck	Gibson
Bergman	Glass
Bourne	Gray
Bradbury	Hardin
Bradford	Harris of Archer
Broyles	Hodges
Burton	Huddleston
Butler of Brazos	Hunt
Cagle	Hunter
Calvert	Hyder
Canon	Jones of Atascosa
Cooper	Jones of Falls
Cowley	Jones of Shelby
Craddock	Jones of Wise
Davis	Keefe
Davison of Fisher	King
Davisson	Lanning
of Eastland	Latham
Dunlap of Hays	Lemens

Lindsey	Russell
Lotief	Sessions
Lucas	Settle
Luker	Shofner
Mauritz	Steward
McConnell	Stovall
McKinney	Tarwater
Moffett	Tennyson
Morris	Tillery
Morrison	Venable
Padgett	Waggoner
Palmer	Walker
Payne	Wells
Petsch	Westfall
Quinn	Wood of Harrison
Reed of Bowie	Wood of Montague
Roach of Angelina	Worley
Roach of Hunt	Youngblood
Rogers	

## Nays—52

Butler of Karnes	Jackson
Caldwell	James
Celaya	Jefferson
Clayton	Knetsch
Collins	McCalla
Colquitt	McFarland
Colson	McKee
Crossley	Moore
Dickison	Morse
Dunagan	Newton
Duvall	Nicholson
Dwyer	Olsen
Ford	Patterson
Fuchs	Pope
Good	Reader
Greathouse	Reed of Dallas
Hankamer	Roane
Hanna	Roark
Harris of Dallas	Roberts
Hartzog	Rutta
Herzik	Scarborough
Hill	Smith
Hofheinz	Stanfield
Holland	Stinson
Hoskins	Thornton
Howard	Young

## Present—Not Voting

Daniel

## Absent

Graves	Leath
Head	Riddle
Lange	Spears

## Absent—Excused

Fitzwater	Leonard
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## PAIRED

Mr. Daniel (present), who would vote "nay," with Mr. Graves (absent) who would vote "yea."

Mr. Wells moved to reconsider the vote by which the substitute amendment was adopted, and to table the motion to reconsider.

The motion to table prevailed.

Mr. Thornton offered a substitute for the amendment offered by Mr. Bradbury, which amendment was ordered not printed in the Journal.

Mr. Petsch and others raised the following point of order on consideration of the substitute amendment by Mr. Thornton:

"We make the point of order that all of the provisions of the above named substitute bill, insofar as the same proposes to authorize the various political subdivisions of the State of Texas to determine by a majority vote the question of whether or not the liquor referred to by such provisions should be sold either in "broken" or "unbroken" packages, are unconstitutional for the following reasons:

"(a) Because the Legislature is not granted the right to regulate the sale of intoxicating liquors in any other way or manner than by the passage of a general law applicable to all political subdivisions of the State of Texas alike. For example, the Legislature could not authorize the sale of liquor only in "broken" packages in Travis County on the one hand, and on the other authorize the sale of such liquor in Bexar County in "unbroken" packages. The Legislature having no such authority within itself, it is self-evident that it could not confer such authority to create the condition or to bring about the situation mentioned in the preceding sentence by permitting the citizens of Travis and Bexar Counties, by means of elections, to so regulate the sale of intoxicating liquors in each of such counties.

"(b) Subparagraph (b) of Section 20, Article XVI of the Constitution only authorizes the qualified voters of the various political subdivisions of the State to 'determine . . . whether the sale of intoxicating liquors for beverage purposes shall be prohibited or legalized within the prescribed limits.' It further provides for elections on the sale of intoxicating liquor of 'various types and various alcoholic content.' It is self-evident from these plain provisions of subparagraph (b) that the only right of local option conferred by the Consti-

tution is to determine: (1) whether or not the sale of intoxicating liquors should be legalized in whole or prohibited altogether, and (2) what particular "type of various alcoholic content" liquors should be legalized for sale on the one hand or prohibited on the other.

"This itemization of the local option privilege as set forth in subparagraph (b) clearly limits the right of the Legislature to confer the local option privilege named in such section and no other. The itemization of the privilege clearly constitutes a limitation upon the rights of the Legislature to authorize elections for the purpose of deciding upon the privileges named in the provisions of said paragraph and no other.

"It is the plain and evident purpose of the Thornton amendment to enlarge upon the privileges of local option determination and by having the Legislature add voting privileges other than those which are granted in the aforementioned Constitutional provisions. This is clearly an effort to enlarge these local grants. The Thornton substitute in that respect fails to recognize that the aforementioned provisions of subparagraph (b) are as a matter of fact limited upon the power of the Legislature and upon the various political subdivisions in relation to their local rights regarding the sale of intoxicating liquors. Such an extension of privileges is not authorized by the Constitution, but is directly contrary to its aforementioned expressed limitations and contrary to all established rules of Constitutional construction.

"Under the provisions of the revised Thornton substitute, no less than under the original substitute as offered yesterday, the result possible by the operations of such a law is that within one political subdivision, the sale of distilled liquors by drink under restaurant and club permits would be legal, while within a neighboring subdivision, the method of sale would be entirely different. This presents a situation in which the execution of a law is made dependent upon the vote of the electorate within the subdivision. Since the local option privilege by our Constitution is a specifically granted privilege, since the Thornton substitute attempts to enlarge upon this privilege, and since the result and substance of the revised substitute is no different from that of the original

substitute, it is none the less unconstitutional."

PETSCH,  
ALSUP,  
JONES of Wise,  
JONES of Atascosa,  
GRAVES,  
MOFFETT.

The Speaker overruled the point of order, and had read the following opinion by Wm. Madden Hill and T. F. Morrow, Assistant Attorneys General, in connection therewith:

Offices of the Attorney General  
Austin, Texas, October 2, 1935.

Hon. J. D. Young, Chairman of the  
Committee on Liquor Traffic,  
House of Representatives, Austin,  
Texas.

Dear Sir: We are in receipt of your communication of October 1st, which communication is as follows:

"The question of the validity of that provision of the attached bill to provide for a local option election on the method of sale of liquor (see particularly pasted changes), has been questioned in the House of Representatives.

"Will you please advise the Liquor Traffic Committee whether or not in your opinion this provision is unconstitutional."

The bill referred to in your communication is proposed under the recently adopted amendment to the State Constitution vesting the Legislature with power to regulate manufacture, sale, transportation and possession of intoxicating liquors, and various other regulations of intoxicating liquors; subdivision (h) of Section 17 provides for restaurant permits; subdivision (i) of Section 17 provides for a club permit; Section 13 of the act provides that the Commissioner may refuse to issue a permit to any applicant if he has reasonable grounds to believe that any of the conditions set out in said subdivision exist. The pasted provisions of the statute add to the conditions provided for in section 13 an additional requirement, to-wit: before a restaurant permit shall be issued in any political subdivision of the State an election shall be held authorizing the issuance of such permit; a like provision exists as an additional condition to the issuance of a club permit.

The questions naturally arising in view of your communication are whether the proposed provisions vio-



late our Constitution with respect to the delegation of legislative authority and the provisions of our Constitution relating to the suspension of statutes, and it is with these questions in mind that we have considered the proposed provisions.

It is our view that the proposed provisions are valid regulations on the part of the Legislature and do not constitute unconstitutional delegation of power or the right to suspend any legislative enactment. As presented the proposed provisions merely constitute one of the requirements and conditions upon which a club or restaurant permit may be issued, and the incidental election attendant upon and required to establish the existence of one of these conditions does not viciate the act. In this connection we direct your attention to the case of *Spears v. City of San Antonio*, a decision by a Supreme Court, found in 223 S. W. 166, in which Judge Greenwood used the following language:

"It is an important and ordinary function of the Legislature, however, to confer powers, on appropriate governmental agencies, to be exercised in the promotion of the general welfare; and it is now thoroughly settled that it furnishes no valid objection to the grant of powers by the state to municipalities for the act of the Legislature granting the powers to require each municipality, before availing itself of the granted powers, to indicate its acceptance of same by the votes of the electors of the municipality. The case of *San Antonio v. Jones*, 28 Tex. 33, recognized and declared the validity of an act of the Legislature conferring a power on the city of San Antonio to subscribe to the capital stock of a railroad company, notwithstanding a provision that the power should not be exercised until two-thirds of the electors of the city voted for the subscription. After announcing that the case of *State v. Swisher* had been correctly decided, the court, per Chief Justice Moore, said:

"But we cannot agree that it has any application to the case now before the court. It is not a legitimate construction of the act to incorporate the San Antonio and Mexican Gulf Railroad Company to say that the Legislature intended or did thereby confer upon the citizens of the city of San Antonio any legislative power whatever. The Legislature may grant authority as

well as give commands, and acts done under its authority are as valid as if done in obedience to its commands. Nor is a statute, whose complete execution and application to the subject-matter is, by its provisions, made to depend on the assent of some other body, a delegation of legislative power. The discretion goes to the exercise of the power conferred by the law, but not to make the law itself. The law, in such cases, may depend for its practical efficiency on the act of some other body or individual, still it is not derived from such act, but from the legislative authority. Legislation of this character is of familiar use, and occurs whenever rights or privileges are conferred upon individuals or bodies, which may be exercised or not in their discretion. And if it may be left to the judgment of individuals or private corporations whether they will avail themselves of privileges conferred by the Legislature, there is certainly no valid reason why the same may not be done with citizens of a town or district, who, as a class, are to be affected by the proposed act."

We also direct your attention to the decision of the Supreme Court in the case of *Werner v. City of Galveston*, 72 Tex. 27, 7 S. W. 726, 12 S. W. 159:

"It is a well-settled principle that the Legislature cannot delegate its authority to make laws by submitting the question of their enactment to a popular vote; and in *State v. Swisher*, 17 Texas, 441, this court held an act of the Legislature which authorized the counties of the state to determine by popular vote whether liquor should be sold in their respective limits to be unconstitutional. But it does not follow from this that the Legislature has no authority to confer a power upon a municipal corporation and to authorize its acceptance or rejection by the municipality according to the will of the voters as expressed at the ballot box. Mr. Dillon says: 'It is well established that a provision in a municipal charter that it shall not take effect unless assented to or accepted by a majority of the inhabitants is in no just sense a delegation of legislative power, but merely a question as to the acceptance or rejection of a charter.' 1 Dillon on Mun. Cor., Sec. 44, and cases cited. See especially *Alcorn v. Hamer*, 38 Miss. 652. That such legislation is not unconstitutional

is expressly decided by this court in the case of *Graham v. City of Greenville*, 67 Texas, 62. The act under consideration merely leaves each town or city in the state to determine by a vote whether it will exercise the power of controlling its public schools as a separate school district or not, and is in our opinion clearly constitutional."

We direct your attention further to the case of *Ex Parte King* by the Court of Criminal Appeals in 107 S. W. page 549, in which the validity of an ordinance of the City of Fort Worth which fixed the saloon limits in that city was attacked as being a delegation of legislative authority to the municipality, and in which Judge Ramsey used the following language:

"We think all these contentions must be ruled against the relator. It was distinctly held by this court in the cases of *Ex parte Levine*, 46 Tex. Cr. R. 364. 81 S. W. 1207, and *Garonzik v. State*, 100 S. W. 374, that the fixing of saloon limits is a mere regulation of the liquor traffic, and not in any sense a prohibition thereof, and that such limits, as a regulation, are lawful and should be upheld. The Legislature of this State is authorized to empower city councils by special charter to prescribe the boundaries and limits within which the sale of liquor shall be prohibited by law, and such local authorities may define and limit the area within which alone such sale may be lawful. This was distinctly ruled in the case of *Cohen v. Rice*, 101 S. W. 1052, by the Court of Civil Appeals of the Fifth Supreme Judicial District, in which case writ of error was refused by our Supreme Court. This is in accord with and is well sustained by the authorities."

The questions presented are not free from difficulty due to the confusion of the opinions and the differences that existed between the Court of Criminal Appeals and the Supreme Court in the so-called pool hall cases.

Accordingly, it is our opinion that the provisions in question do not contravene the constitutional provisions referred to.

Yours very truly,

WM. MADDEN HILL,  
Assistant Attorney General.

T. F. MORROW,  
Assistant Attorney General.

Mr. Bradbury moved to table the substitute amendment by Mr. Thornton.

Question recurring on the motion to table, yeas and nays were demanded.

The roll of the House was called, and the vote announced, as follows: Yeas, 69; Nays, 68.

A verification of the vote was called for.

The roll of the "yeas" and "nays" was then called, and the verified vote resulted as follows:

#### Yeas—76

Adamson	Jones of Atascosa
Adkins	Jones of Shelby
Aikin	Jones of Wise
Alexander	Keefe
Alsup	Lanning
Ash	Latham
Atchison	Lemens
Beck	Lindsey
Bradbury	Lotief
Bradford	Lucas
Broyles	Luker
Burton	McConnell
Cagle	McKinney
Calvert	Moffett
Canon	Morris
Cooper	Morrison
Cowley	Palmer
Craddock	Payne
Davis	Petsch
Davison of Fisher	Quinn
Dunlap of Hays	Reed of Bowie
Dunlap of Kleberg	Riddle
England	Roach of Angelina
Fain	Rogers
Farmer	Russell
Fisher	Sessions
Fox	Settle
Gibson	Stovall
Graves	Tarwater
Gray	Tennyson
Hardin	Venable
Harris of Archer	Waggoner
Head	Wells
Hodges	Westfall
Huddleston	Wood of Harrison
Hunt	Wood of Montague
Hunter	Worley
Hyder	Youngblood

#### Nays—68

Bergman	Collins
Bourne	Colquitt
Butler of Brazos	Colson
Butler of Karnes	Crossley
Caldwell	Daniel
Celaya	Davisson
Clayton	of Eastland

Dickison	McCalla
Dunagan	McFarland
Duvall	McKee
Dwyer	Moore
Ford	Morse
Frazer	Newton
Fuchs	Nicholson
Good	Olsen
Greathouse	Padgett
Hankamer	Patterson
Hanna	Pope
Harris of Dallas	Reed of Dallas
Hartzog	Roach of Hunt
Herzik	Roane
Hill	Roark
Hofheinz	Roberts
Holland	Rutta
Hoskins	Scarborough
Howard	Smith
Jackson	Spears
James	Stanfield
Jefferson	Steward
Jones of Falls	Stinson
King	Thornton
Knetsch	Tillery
Lange	Walker
Leath	Young
Mauritz	

Present—Not Voting

Glass

Absent

Reader Shofner

Absent—Excused

Fitzwater Leonard

The Speaker announced that the motion to table prevailed.

#### PAIRED

Mr. Glass (present), who would vote "yea," with Mr. Reader (absent), who would vote "nay."

Mr. Hankamer offered a substitute amendment for the committee amendment by Mr. Morse as substituted by the amendment by Mr. Bradbury, which amendment was ordered not printed in the Journal.

Question—Shall the substitute amendment by Mr. Hankamer be adopted?

#### APPOINTMENT ON SPECIAL COMMITTEE

The Speaker announced the appointment of Mr. Lucas as an additional member of the committee heretofore appointed to make certain investigation in regard to the arrest of commercial motor vehicles operators, same

being at the request of the other members of the committee.

#### RECESS

Mr. Caldwell moved that the House adjourn until 9:30 o'clock a. m., tomorrow.

Mr. Lemens moved that the House recess to 9:30 o'clock a. m., tomorrow.

Question recurring on the motion by Mr. Lemens, it prevailed and the House, accordingly, at 5:35 o'clock p. m., took recess to 9:30 o'clock a. m., tomorrow.

#### APPENDIX

#### STANDING COMMITTEE REPORTS

The following committees have filed favorable reports on bills and resolution as follows:

Appropriations: House Concurrent Resolution No. 3; Senate Bills Nos. 19, 20, 25 and 36.

Counties: House Bills Nos. 43 and 83.

Criminal Jurisprudence: House Bill No. 93.

Revenue and Taxation: House Bills Nos. 72 and 89.

The Committee on Revenue and Taxation filed an adverse report on House Bills Nos. 73 and 74.

#### REPORTS OF THE COMMITTEE ON ENGROSSED BILLS

Committee Room,

Austin, Texas, October 2, 1935.

Hon. Coke Stevenson, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills to whom was referred

H. B. No. 21, A bill to be entitled "An Act to amend Article 7060 Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 19, Acts of the Forty-first Legislature, Fifth Called Session so as to increase and provide for an occupation tax based on gross receipts, upon each individual company, corporation, or association engaged in owning, operating, managing, or controlling any gas, electric light, electric power, or water works, or water and light plant, for local sale and distribution in incorporated towns

or cities of certain populations within this State and charging for gas, electric lights, electric power, or water; providing certain exceptions; enacting necessary means and regulations in order to collect said tax and incidental to said subject; and to amend Article 7070 Revised Civil Statutes of Texas, 1925, so as to increase and provide for an occupation tax based on gross receipts upon each individual company, corporation, or association owning, operating, managing, or controlling any telephone line or telephone lines or any telephones within this State, and charging for the use of same, requiring reports from said individuals, companies, corporations, or associations, and declaring an emergency."

Has carefully compared same and finds it correctly engrossed.

HODGES, Chairman.

Austin, Texas, October 2, 1935.

Hon. Coke Stevenson, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills, to whom was referred

H. B. No. 52, A bill to be entitled "An Act amending Subdivision (h), Section 5, Chapter 116, Acts of Forty-third Legislature, and declaring an emergency,"

Has carefully compared same, and finds it correctly engrossed.

HODGES, Chairman.

Austin, Texas, October 2, 1935.

Hon. Coke Stevenson, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills, to whom was referred

H. B. No. 97, A bill to be entitled "An Act validating the organization of Water Control and Improvement Districts and validating all acts of the officials in creating such districts; and validating all bonds issued and all bonds voted but not yet issued by such districts; validating all acts of the officials of said districts, and declaring an emergency,"

Has carefully compared same, and finds it correctly engrossed.

HODGES, Chairman.

## TWELFTH DAY

(Continued)

(Friday, October 4, 1935)

The House met at 9:30 o'clock a. m., and was called to order by Speaker Stevenson.

### REGARDING CONTEST OF ELECTION OF HON. HORACE B. SESSIONS

Hon. J. Franklin Spears, of Bexar County, having been recognized by Speaker Stevenson, raised the following point of order on further consideration by the House of Representatives of the contest of the election of Hon. Horace B. Sessions from the 92nd Representative District of Texas:

"Mr. Speaker:

"Two or three days ago at which time I was ill in San Antonio, Mr. D. M. West had filed with this body another purported election contest against one of our fellow members, the Hon. Horace B. Sessions representative of the 92nd Representative District. As you will recall this identical contest was attempted to be filed with this body several weeks ago, at which time upon my motion Hon. Horace B. Sessions was temporarily seated, and the purported contest was referred to the Committee on Privileges, Suffrage and Elections for investigation and report. At a hearing before that body a point of order was sustained upon the ground that the law relative to election contests of this nature and character had not been complied with and particularly Article 3059 of Vernon's Annotated Statutes. The point of order was sustained with the understanding that no prejudice be done either party to the contest. In compliance therewith Mr. D. M. West has filed with the Chair in accordance with the statutes this pending contest.

"I raise the point of order, Mr. Speaker, that this purported contest is not properly before this body, and no cognizance should be taken of the same, for the reason that Mr. West as an individual citizen who is not a member of this body, has no right, power nor authority to question or challenge the qualifications of a member of this body. Mr. Sessions has been a very valuable member of this House, and has ably, efficiently and honestly represented his district. The proof of this statement lay in the fact